IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Revision No. 5887 of 2006

Date of Decision: 9.11.2006

Ranjit Singh ...Petitioner

Vs.

Amrit Lal & Ors. ...Respondents

CORAM Hon'ble Mr.Justice Vinod K.Sharma

Present: Shri Sudershan Goel, Advocate,
for the petitioner.

Vinod K. Sharma, J. (Oral)

Present revision petition has been filed against an order passed by the learned Addl. Civil Judge (Senior Division) vide which the application filed by the petitioner for transposing him as plaintiff has been dismissed.

The plaintiff respondent No.4 herein has filed a suit for possession by way of specific performance with regard to the half share of the house constructed on the land measuring 6 Marlas i.e. half share of the land measuring 12 Marlas. The suit has been filed on the basis of agreement dated 30.4.1998 in which the petitioner was impleaded as defendant. However, in the suit, no right was claimed on his behalf. The petitioner instead of filing an independent suit or joining with the plaintiff

filed a counter claim in the said suit. However, an objection was raised that no counter claim was competent by the defendant against other defendants.

Faced with this situation he moved an application for being transposed as plaintiff. The application filed by the petitioner was rejected by holding that the plaintiff has not claimed any relief on behalf of the defendant-petitioner and that the suit as framed does not permit the petitioner to be transposed as plaintiff.

Learned counsel for the petitioner has challenged the order by placing reliance on the judgment of Hon'ble Supreme Court in **Municipal Council, Hansi Vs. Mani Raj 2001 (2) R.C.R. (Civil) 628** and **P.S.Maddanappa (deceased) after him by his legal representatives Vs. Chandramma and another AIR 1965 SC 1812.** Para No.15 of P.S.Maddanappa's case (supra) reads as under:-

> "15. Now regarding the second point, this objection is purely technical. The plaintiff sued for partition of the suit properties upon the ground that they were inherited jointly by her and by the first defendant and claimed possession of her share from the other defendants who were wrongfully in possession of the properties. She also alleged that the first defendant did not co-operate in the matter and so she had to institute the suit. The first defendant admitted the plaintiff's title to half share in the properties and claimed a decree also in her own favour to the extent of the remaining half share in the properties. She could also have prayed for her transposition as a co-plaintiff and under O.1,R.10(2) C.P.C.

> the Court could have transposed her her as a co-plaintiff. The power under this provision is exercisable by the Court even suo motu. As pointed out by the Privy Council in Bhupendra V. Rajeswar 58 Ind.App.228; (AIR 1931 PC 162) the power ought to be exercised by a court for doing complete justice between the parties. Here both the plaintiff and the first defendant claim under the same title and though defendants 2 to 8 had urged special defences against the first defendant they have been fully considered and adjudicated upon by the High Curt while allowing her appeal. Since that trial court upheld the special defences urged by defendants 3 to 8 and negatived the claim of the first defendant it may have thought it unnecessary to order her transposition, as plaintiff. But the High Court could while upholding her claim, well have done so. Apparently it either overlooked the technical defect or felt that under O.XLI, R.33 it had ample power to decree her claim. However that may be, the provisions of S.99 would be a bar to interfere here with the High Court's decree upon a ground such as this."

He also placed reliance on the judgment of this Court in **Om Parkash and another Vs. Parshotam Lal and others 2005 (3) RCR (Civil)** 382

The reading of above said judgments clearly shows that in cases where the plaintiff claims the rights on behalf of the defendant in a suit in that eventuality it is open to the defendant to be transposed as plaintiff. However, in the present case the plaintiff has filed a suit in his

own right without claiming any relief on behalf of the defendant. In this view of the situation, it was not open to the defendant to be transposed as a plaintiff. The mere fact that the plaintiff has not objected to the said application cannot be a ground to allow him to be transposed as a plaintiff. The learned Trial Court was, therefore, right in holding that the suit as framed does not permit the petitioner to be transposed as plaintiff.

Therefore, there is no illegality in the impugned order which may call for interference by this Court in revisional jurisdiction.

Dismissed.

(Vinod K.Sharma)
Judge

9.11.2006
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